

Letter of Findings: 04-20200005
Indiana Sales and Use Tax
For the Years 2016 - 2018

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Dealership could not demonstrate the value or usage of its demonstrator vehicles with documentation and therefore failed to meet its burden.

ISSUE

I. Use Tax - Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E. 2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Reed v. City of Evansville*, 956 N.E.2d 684 (Ind. Ct. App. 2011); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#); Sales Tax Information Bulletin 28S (December 2016); Sales Tax Information Bulletin 28S (March 2017).

Taxpayer protests the imposition of use tax on demonstrator vehicles.

STATEMENT OF FACTS

Taxpayer is a car dealership located in Indiana. Taxpayer sells used cars as well as providing repair, collision, and warranty services. The Indiana Department of Revenue ("Department") conducted an audit of corporate income tax, withholding, tire fees, and sales and use tax for the 2016 through 2018 tax years. The audit resulted in the assessment of additional use tax. Taxpayer protested the Department's assessments and an administrative hearing was held. This Letter of Findings results. Additional facts will be provided as needed.

I. Use Tax - Imposition.

DISCUSSION

As a result of the Department's audit of Taxpayer's books and records, additional use tax was assessed on certain Taxpayer purchases, including the use of demonstrator vehicles by someone other than a full-time salesperson.

As a threshold issue, it is a taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). Tangible personal property is subject to use tax when the tangible personal property is "stored, used or otherwise consumed in Indiana . . . unless the Indiana state gross retail tax has been collected at the point of purchase." [45 IAC 2.2-3-4](#).

IC § 6-8.1-5-4(a) explains the recordkeeping requirements for every person subject to a listed tax:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

If the records provided by the taxpayer are insufficient, IC § 6-8.1-5-1(b) empowers the Department to issue an assessment based on the best information available:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail. (Emphasis added).

Sales Tax Information Bulletin # 28S (December 2016), [20161228-IR-045160562NRA](#) explains the Department's treatment of demonstrator vehicles:

Vehicles provided to other than full-time salespersons (e.g., family members, part-time salespersons, mechanics, managers of the dealership, and other individuals) are subject to use tax at a rate calculated as the Internal Revenue Service's optional business standard mileage rate times the Indiana sales tax rate. The vehicle dealer is required to pay the tax annually. Dealers are required to keep records of each vehicle, the miles driven, and when use tax was paid for the miles driven.

In lieu of accounting for the miles driven, the dealer can elect to report the use tax on 2 percent of the dealer's cost of purchasing the vehicle for each month (or fraction of a month) that the vehicle is used as a demonstrator, multiplied by the Indiana sales tax rate.

This same explanation also appears in the March 2017 update of the information bulletin. See Sales Tax Information Bulletin # 28S (March 2017), [20170426-IR-045170210NRA](#).

The Department found that Taxpayer had several dealer plates in use by someone other than a full-time salesperson. Taxpayers did not keep records of the miles or vehicles driven as demonstrators with their dealer plates, so the Department calculated use tax on 2 percent of the average vehicle cost based on annual vehicle purchase accounts. In its protest, Taxpayer claimed that all but one of its dealer plates was missing, and that the one remaining plate was used by a full-time salesperson. Taxpayer also provided two affidavits stating that only one full-time salesperson was authorized to use a dealer plate for demonstrator vehicles and providing different numbers for the average vehicle cost.

Taxpayer argued at the hearing that its affidavits are sufficient to overcome summary judgment in an Indiana court and therefore should be admitted into an administrative proceeding. But the admissibility and the weight of these affidavits are, importantly, distinct concepts. *Reed v. City of Evansville*, 956 N.E.2d 684, 697 (Ind. Ct. App. 2011)(finding that an affidavit lacking essential detail would affect weight and credibility, not admissibility.) Taxpayer provided no corroborating evidence along with its affidavits to help the Department determine the correct amount of tax liability based on average vehicle value. Moreover, Taxpayer provided no evidence whatsoever supporting its claim that all but one dealer plate had been lost and that these plates were not being

used by someone other than a full-time salesman. Taxpayer showed no reports of stolen or lost plates, and provided no records regarding these plates at all. Taken together, Taxpayer's evidence is insufficient to show that Taxpayer's liability is something other than what the Department assessed for the tax years. Taxpayer has failed to meet its burden of proving the Department's proposed assessment is incorrect.

FINDING

Taxpayer's protest is respectfully denied.

June 30, 2020

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An [html](#) version of this document.